IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24-03-2005

CORAM

THE HONOURABLE MR. JUSTICE P.K. MISRA

WRIT PETITION NO.3738 OF 1998

S. Vincent,
S/o. Late K. Swaminathan .. Petitioner

Vs.

1. The State of Tamilnadu,
rep. by the Secretary to Govt.,
Education Department,
Fort St. George, Madras.

2. The Directorate of Collegiate
Education, Govt. of Tamil Nadu,
DPI Complex, Madras 6.

3. The Correspondent,
Nessamani Memorial Christian College,
Marthandam, Kanyakumari District. .. Respondents

Petition filed under Article 226 of the Constitution of India for the issuance of writ of Mandamus as stated therein.

For Petitioner : Mr.G. Justin
For Respondents 1-2 : Mr. Sanjay Ramaswamy
Govt. Advocate
Respondent-3 : Mr.N. Paul Vasanthakumar

J U D G M E N T

The petitioner has prayed for issuing a writ of Mandamus directing the respondents to give effect to the order dated 19.10.1995 of the UGC and G.O.Ms.No.393 dated 16.4.1985 after deletion of para 9 of the said G.O., and G.O.Ms.No.524 dated 18.3.1983 and consequently fix the scale of pay of the petitioner in the post of Asst. Physical Director in the scale of Rs.700-1600 with effect from 1.4.1980 as per G.O.Ms.Mo.393 dated 16.4.1985 and to pay all arrears of salary.

2. The case of the petitioner is as follows :-

Petitioner was appointed as Assistant Physical Director under the third respondent College by order dated 22.11.1972 in

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the scale of Rs.325-15-550. The State Government in G.O.Ms.No.524 dated 18.3.1983 had accepted the recommendation relating to payment of UGC pay scale to Physical Directors/Instructors of Physical Education. As per the said G.O., the respondents should have fixed the scale of pay of the petitioner in the scale of Rs.700 - 1600. However, they had failed to do so, possibly on the assumption that the post of Assistant Physical Director was not a sanctioned post. According to case of the petitioner, the Registrar of Madurai University has already issued orders in 1972 laying down that the Colleges having strength of more than 500 students could appoint Assistant Physical Director and the petitioner had been appointed only on the aforesaid basis. Subsequently, the State Government issued another G.O., namely, G.O.Ms.No.393 dated 16.4.1985, on the very same subject. However, as per paragraph 9 of the said G.O., Physical Directors were left out on an erroneous assumption that they need not be brought within the purview of the Order prescribing scale of pay for the Physical Directors and on the basis of the said G.O., implementation of UGC Scale to the petitioner was also denied. It is the contention of the petitioner that he was discharging the very same duty as that of the Director of Physical Education and he should not have been discriminated by denying UGC scale of pay which is applicable to others. Several representations were made by the petitioner, but to no avail. It has been further indicated by him that he was appointed as Physical Director after the retirement of the incumbent by order dated 8.6.1996 in the scale of Rs.2,200 - 4,000. It is his case that he should have been fixed in the revised UGC Scale of Rs.700 -1600 with effect from 1.4.1980 and on that footing he is entitled to all the arrears.

3. A Counter affidavit has been filed on behalf of the first and second respondents. In the counter affidavit it is indicated that there was no post of Assistant Physical Director in the third respondent College and only one post of Director of Physical Education and one post of Physical Instructor were sanctioned. The petitioner was appointed as Physical Instructor and his pay was fixed as per the Tamil Nadu Pay Commission Scales of Pay and he was not entitled to UGC scale of pay. It has been further indicated that according to G.O.Ms.No.393 dated 16.4.1985, the Physical Training Instructors who were then in the scale of pay of Rs.350-10-420-15-600 were not brought under the UGC scale of pay and hence the petitioner cannot claim that his pay ought to have been fixed in the UGC scale as per G.O.Ms.No.524 dated 18.3.1983. It has been indicated that subsequent G.O.Ms.No.393 dated 16.4.1985 was on the basis of the recommendation made by the Director of Collegiate Education and such G.O., was in partial modification of the earlier G.O.Ms.No.524 dated 18.3.1983 and as per paragraph 9 of G.O.Ms.No.393 dated 16.4.1985, Physical Training Instructors have not been brought under UGC Scale of pay.

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4. G.O.Ms.No.393 dated 16.4.1985, which specifically lays down UGC scale of pay need not be made applicable to Physical Instructors, has not been specifically challenged by the petitioner. The petitioner claims that his pay scale in UGC Scale of pay should have been fixed as Assistant Physical Director and he has claimed that all arrears should be paid. It is not disputed that subsequently the petitioner had been promoted as Physical Director and thereafter his scale of pay was fixed and paid in accordance with the existing UGC scales of pay. In essence, the claim relates to applicability of UGC scale of pay to the petitioner for the past period during 1980's and 1990's. It is of course true that the petitioner has made representations earlier, however, the petitioner had kept quiet for a long period and the writ petition has been filed only in 1998 and even in such writ petition, prayer is for issuing a writ of Mandamus directing the respondents to fix the scale in the post of Assistant Physical Director, whereas, as per the counter affidavit filed by the respondents, his appointment had been confirmed as a Physical Instructor. Whether as a Physical Instructor the petitioner was entitled to UGC scale of pay or not also is not a matter agitated here as the applicability of UGC scale of pay to the Physical Instructor has been specifically declined in G.O.Ms.No.393 dated 16.4.1985, which has not been challenged.

5. In such background, the prayer made in the writ petition cannot be granted and it is apparent that the writ petition is hit by the principles of laches. Filing of repeated representations is not contemplated and if the representation of the petitioner, which was made in 1987 or soon thereafter, was not favourably considered, the petitioner should have agitated his grievance at that time. In such view of the matter, the writ petition is liable to be dismissed.

6. Accordingly, the writ petition is dismissed without any order as to costs.

dpk

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

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To

1. The Secretary to Govt of Tamilnadu,
   Education Department,
   Fort St. George, Madras.

2. The Directorate of Collegiate
   Education, Govt. of Tamil Nadu,
   DPI Complex, Madras 6.

+ 1 cc to G.Justin, Advocate SR No.14283

+ 1 cc to Mr.N. Paul Vasanthakumar, Advocate SR No.14763

+ 1 cc to the Government Pleader SR No.14893

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